

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: ASHINC CORPORATION, <i>et al.</i> , Debtors.	Chapter 11 Case No. 12-11564 (CSS) (Jointly Administered)
CATHERINE E. YOUNGMAN, LITIGATION TRUSTEE FOR ASHINC CORPORATION, ET. AL., AS SUCCESSOR TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ASHINC CORPORATION, AND ITS AFFILIATED DEBTORS, Plaintiff, BDCM OPPORTUNITY FUND II, LP, BLACK DIAMOND CLO 2005-1 LTD., and SPECTRUM INVESTMENT PARTNERS, L.P., Intervenors, v. YUCAIPA AMERICAN ALLIANCE FUND I, L.P., and YUCAIPA AMERICAN ALLIANCE (PARALLEL) FUND I, L.P., Defendants.	Bankruptcy Adv. Proc. No. 13-50530 (CSS) Civil Action No. 21-cv-1649-CFC

CATHERINE E. YOUNGMAN, LITIGATION TRUSTEE FOR ASHINC CORPORATION, ET AL., AS SUCCESSOR TO BDCM OPPORTUNITY FUND II, LP, BLACK DIAMOND CLO 2005-1 LTD., SPECTRUM INVESTMENT PARTNERS, L.P., BLACK DIAMOND COMMERCIAL FINANCE, L.L.C., as co-administrative agent, and SPECTRUM COMMERCIAL FINANCE LLC, as co-administrative agent,

Plaintiff,

v.

YUCAIPA AMERICAN ALLIANCE FUND I, L.P., and YUCAIPA AMERICAN ALLIANCE (PARALLEL) FUND I, L.P.,

Defendants.

Bankruptcy Adv. Proc. No. 14-50971 (CSS)

Civil Action No. 21-cv-1650-CFC

STATUS REPORT REGARDING MOTIONS TO WITHDRAW REFERENCE

Defendants-Appellants Yucaipa American Alliance Fund I, L.P., and Yucaipa American Alliance (Parallel) Fund I, L.P., (collectively “Yucaipa” or “Defendants”), and Appellee-Plaintiff Catherine E. Youngman, in her capacity as the Litigation Trustee and Plan Administrator (the “Trustee” or “Plaintiff,” and together with the Defendants, the “Parties”) hereby submit this joint status report providing an update to the Court on the status of above-captioned relevant proceedings.

STATUS REPORT

1. On February 1, 2013, the Official Committee of Unsecured Creditors in the bankruptcy case filed a complaint initiating adversary proceeding number 13-50530, and an amended complaint was filed on March 14, 2013, in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

2. On November 19, 2014, BDCM Opportunity Fund II, LP, Black Diamond CLO

2005-1 Ltd., and Spectrum Investment Partners, L.P. filed a complaint initiating adversary proceeding number 14-50971. Adversary proceeding numbers 13-50530 and 14-50971 are collectively referred to herein as the “Adversary Proceedings.”

3. Under the Debtors’ Modified First Amended Joint Chapter 11 Plan of Reorganization dated December 3, 2015, approved by the Bankruptcy Court, and the Litigation Trust Agreement dated December 20, 2016, the Adversary Proceedings are now jointly prosecuted by the Plaintiff.

4. Following briefing on cross motions for summary judgment, on May 4, 2021, the Bankruptcy Court issued an opinion granting in part and denying in part, the Parties’ cross motions for summary judgment on many of the claims asserted in the Adversary Proceedings. On June 23, 2021, the Bankruptcy Court entered a judgment implementing that ruling (the “2021 Judgment”) [Adv. Pro. No. 13-50530, D.I. 841; Adv. Pro. No. 14-50971, D.I. 579].

5. Yucaipa filed a motion to stay the Judgment pending appeal, which the Bankruptcy Court denied. On July 6, 2021, Yucaipa filed notices of appeal of the 2021 Judgment. Those appeals are pending in this Court and docketed at Civil Action No. 21-cv-994 and 21-cv-995.¹ Yucaipa also sought a stay of the 2021 Judgment pending appeal in this Court, but the motion was denied [Civ. Action No. 21-cv-994, D.I. 35; Civ. Action No. 21-cv-995, D.I. 35].

6. On November 23, 2021, in anticipation of the upcoming scheduled trial, Defendants filed motions to withdraw the reference in each of the Adversary Proceedings (the “Withdrawal Motions”), which were docketed with this Court at Civ. Action No. 21-cv-1649, D.I. 1 and Civ. Action No. 21-cv-1650, D.I. 1. No decision was issued by this Court on the Withdrawal Motions before trial.

¹ Separately, Yucaipa filed objections under Bankruptcy Rule 9033 to the Bankruptcy Court’s proposed findings of fact and conclusions of law and recommendation in Adv. Pro. No. 14-50971, styled as an Opinion [14-50971, D.I. 563] and Order [14-50971, D.I. 564]. That Rule 9033 proceeding is captioned in this Court at Civ. Action No. 21-cv-1060.

7. The Bankruptcy Court conducted a trial on the remaining issues and claims asserted in the complaints in the Adversary Proceedings over several days in March 2022.

8. On May 2, 2022, the Bankruptcy Court issued its Findings of Fact and Conclusions of Law [Adv. Pro. No. 13-50530, D.I. 1006; Adv. Pro. No. 14-50971, D.I. 742] and the 2022 Judgment (the “2022 Judgment”) [Adv. Pro. No. 13-50530, D.I. 1008; Adv. Pro. No. 14-50971, D.I. 744] on the remaining claims in each of the Adversary Proceedings.

9. On May 12, 2022, the Trustee filed notices of appeal of the 2022 Judgment and the appeals are now docketed in this Court at Civil Action Nos. 22-cv-634-CFC and 22-cv-635-CFC.

10. With respect to the Withdrawal Motions pending before the Court in the above-captioned actions, Yucaipa’s position is that the Motions are now moot and, by reason thereof, shall withdraw the Withdrawal Motions.

Dated: July 1, 2022

<p>FOX ROTHSCHILD LLP</p> <p><u>/s/ Seth A. Niederman</u></p> <p>Seth A. Niederman (DE Bar No. 4588) Citizens Bank Center 919 N. Market Street, Suite 300 Wilmington, DE 19801 Telephone: (302) 654-7444 sniederman@foxrothschild.com</p> <p>-and-</p> <p>JOSEPH HAGE AARONSON LLC</p> <p>Gregory P. Joseph Gila S. Singer 485 Lexington Avenue, 30th Floor New York, NY 10017 Telephone: (212) 407-1200 gjoseph@jhany.com</p> <p>-and-</p> <p>ZAIGER LLC</p> <p>Jeffrey H. Zaiger Judd A. Lindenfeld 2187 Atlantic Street, 9th Floor Stamford, CT 06902 Telephone: (917) 572-7701 jzaiger@zaigerllc.com</p> <p>-and-</p> <p>COHEN AND GRESSER LLP</p> <p>Douglas J. Pepe 800 Third Avenue New York, NY 10022 Telephone: (212) 957-7605 dpepe@cohengresser.com</p> <p><i>Counsel for the Trustee</i></p>	<p>PACHULSKI STANG ZIEHL & JONES LLP</p> <p><u>/s/ Peter J. Keane</u></p> <p>Laura Davis Jones (DE Bar No. 2436) David M. Bertenthal (CA Bar No. 167624) Peter J. Keane (DE Bar No. 5503) 919 N. Market Street, 17th Floor P.O. Box 8705 Wilmington, DE 19899-8705 (Courier 19801) Telephone: (302) 652-4100 Fax: (302) 652-4400 Email: ljones@pszjlaw.com dbertenthal@pszjlaw.com pkeane@pszjlaw.com</p> <p>-and-</p> <p>GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP</p> <p>Patricia L. Glaser (admitted pro hac vice) Gali Grant (admitted pro hac vice) Matthew P. Bernstein (admitted pro hac vice) 10250 Constellation Blvd. 19th Floor Los Angeles, CA 90067 Telephone: (310) 553-3000 Fax: (310) 556-2920 Email: pglaser@glaserweil.com ggrant@glaserweil.com mbernstein@glaserweil.com</p> <p><i>Counsel for Yucaipa</i></p>
---	---